

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/29/07 has been entered.

The pending claims are 1,3-11,18-20,32-38 and 61-62. Only claims 61 and 62 have been withdrawn by the examiner. Claims 34-36 and 38 have been examined. Note the restriction requirement mailed 4/20/06. An examiner does not normally withdraw claims once they have been examined . If applicants wish these claims be not examined they need to cancel them.

Claims 33-36 and 38 remain rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for MED, does not reasonably provide enablement for remaining uses covered by the method claims directed to all types of male sexual dysfunction for claim 33 as well as female sexual dysfunction for claims 34-36 and 38. The specification does not enable any person skilled in the art to which it

pertains, or with which it is most nearly connected, to use the invention commensurate in scope with these claims. The examiner has presented arguments in previous actions why the scope is not enabled. See especially action mailed 9/28/06. Applicants do not particularly address this rejection other than the amendment made to claim 33 discussed above.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1,3-5 and 32 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Buzas (GB'523) in view of Buzas (GB'080). The arguments presented in the preliminary response is the same as presented after final and thus the examiner relies on the same remarks made in the Advisory Action. The secondary reference was relied on since it exemplified various chain lengths at "L" for the same uses as in the primary reference employing similar or identical compounds. Applicants argue that the secondary reference is too dissimilar from applicants compounds. This is not agreed with. By their very name, secondary references are expected to have some structural differences from what is instantly claimed otherwise they would be primary references or anticipations.

Additionally, in presenting evidence, reliance on data, in this instance from

a co-authored publication, has no probative value unless it is accompanied by factual data attesting to the veracity of the results as well as the type of testing relied on and the practical significance of the results. Mere synopsis of a reference is not enough. Additionally, the arguments of counsel cannot take the place of factually supported objective evidence. See, e.g., *In re Huang*, 100 F.3d 135,139-40, 40 USPQ2d 1685, 1689 (Fed. Cir. 1996); *In re De Blauwe*, 736 F.2d 699, 705, 222 USPQ 191, 196 (Fed. Cir. 1984). “The reason for requiring evidence in declaration or affidavit form is to obtain the assurances that any statements or representations made are correct, as provided by 35 U.S.C. 25 and 18 U.S.C. 1001.” (MPEP 716.02(g)). However in the present case such data, even if presented in verified form would **not** be persuasive since it does not address the thrust of the rejection as the closest prior art compound pointed out in GB'523 has not been tested alongside instant compounds rendered obvious as discussed in previous actions.

Claims 6-11,18-20 and 37 remain objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Emily Bernhardt whose telephone number is 571-272-0664.

If attempts to reach the examiner by telephone are unsuccessful, the acting supervisor for AU 1624, James O. Wilson can be reached at 571-272-0661. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Emily Bernhardt/

Application/Control Number: 10/773,035
Art Unit: 1624

Page 6

Primary Examiner, Art Unit
1624